

REMARKS

Claims 1 to 3, 5 to 8, 10 to 23, 25 to 27 and 29 to 44 remain pending. Claims 4, 9, 24 and 28 have been canceled. Claims 35 and 37 to 42 have been withdrawn. Claims 45 and 46 has been added.

Claim 28 has been rejected under 35 U.S.C. 112, first paragraph, for failing to comply with the enablement requirement. The Action stated that unless emulsions, suspensions, and solutions are distinguished, the mix of propellant and water is not a solution.

The rejection of claim 28 under 35 U.S.C. 112, first paragraph, is moot since claim 28 has been canceled.

Claims (unspecified in the Action) having patentably distinct species of repellents have been made subject to an election of species requirement under 35 U.S.C. 121. The Action stated that claims 1 to 34, 43 and 44 were currently generic.

The Action stated that in a telephone interview with Robert Dean on August 13, 2003, a provisional election was made with traverse to prosecute the invention of the species IR3535. The Action stated that this election must be made in the response to this Action. The Action stated that claims 35 and 37 to 42 stand to species withdrawn from further consideration as being drawn to a non-elected invention.

The election of the species IR3535 for further prosecution is affirmed. Claims 34 and 36 read on the elected specie. This election is made with traverse. Applicants submit that examination of the claims is not deemed to present an undue burden with regard to searching, especially since they should be classified in the same class and the same or corresponding subclasses. Reconsideration of the election of species requirement is requested. The traversal notwithstanding, claims 35 and 37 to 42 have been withdrawn as required by the Action.

Claims 31 to 33 have been rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter regarded as the invention.

The rejection of claims 31 to 33 under 35 U.S.C. 112, second paragraph, is overcome in view of the amendment to the preamble of each claim directed to a method.

The objection to claim 20 is not well understood. The preamble of claim 20 refers to a method. Clarification is requested.

Claims 1 to 12, 16 to 19, 25 to 30, 43 and 44 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,055,299 to Dohara et al. (the Dohara patent).

The rejection of claims 1 to 12, 16 to 19, 25 to 30, 43 and 44 under 35 U.S.C. 102(b) over the Dohara patent is traversed. Independent claim 1 requires that a selected insect repellent be employed. The Dohara patent discloses compositions having an

insecticidally active ingredient of a pyrethroidal compound (col. 1, lines 37 to 41), which are toxic compounds intended to paralyze flying insect by penetrating the insect cuticle, notwithstanding their use at low concentrations, and are not intended for application to human skin. None of the selected insect repellents in claim 1 are pyrethroid compounds. Claim 1 further requires a VOC component having from about 1 to about 30 wt.% of a propellant and from about 1 to about 45 wt.% of an alcohol of 1 to 8 carbon atoms. Claim 1 further requires that the VOC component be not greater than about 55 wt.% based on the total weight of the composition. The general teachings of the Dohara patent at col. 1, line 67 to col. 2, line 52 are not concerned with a low VOC insect repellent composition for application to human skin. Instead, the Dohara patent relates to long-term storage stability of aqueous aerosol pyrethroid insecticide compositions in which propellants and organic solvents may be present in broad concentration ranges without regard to effect on VOC level, as generally illustrated in the working examples. The level of VOC component (dimethyl ether plus alcohol) in working examples 1 to 8 and 10 to 15 and comparative examples 1 to 7 is far in excess of the about 55 wt% upper limit in claim 1. Comparative examples 8 and 9 are further distinguished by the absence of an alcohol. Working example 9 is further distinguished based on VOC component level in claims 3 and 21, non-VOC component level in claim 7, water level in claim 11, and propellant level in claims 16 and 18.

Claims 1 to 9, 16, 20 to 22, 24, 26, 27, 32, 33, 34 and 44 have been rejected under 35 U.S.C. 102(b) as being anticipated by, or, in the alternative, obvious under 35 U.S.C. 103(a) in

view of U.S. Patent No. 3,303,091 to Mailander et al. (the Mailander patent).

The rejection of claims 1 to 9, 16, 20 to 22, 24, 26, 27, 32, 33, 34 and 44 under 35 U.S.C. 102(b) or 35 U.S.C. 103(a) in view of the Mailander patent is traversed. Independent claim 1 requires that a selected insect repellent be employed. Claim 1 also requires that the present composition have from about 1 to about 45 wt.% of an alcohol of 1 to 8 carbon atoms. In contrast, none of the compositions disclosed in the Mailander patent have such an alcohol. Claim 1 also requires that water be present at up to about 50 wt.%. The Mailander patent does not disclose a composition having one of the selected insect repellents, about 1 to about 45 wt.% of an alcohol of 1 to 8 carbon atoms, and water at up to about 50 wt.%.

Claims 1 to 11, 13, 15, 16, 20 to 24, 26, 27, and 32 to 34 have been rejected under 35 U.S.C. 102(b) as being anticipated by, or, in the alternative, obvious under 35 U.S.C. 103(a) in view of U.S. Patent No. 5,565,208 to Vlasblom (the Vlasblom patent).

The rejection of claims 1 to 11, 13, 15, 16, 20 to 24, 26, 27, and 32 to 34 under 35 U.S.C. 102(b) or 35 U.S.C. 103(a) in view of the Vlasblom patent is traversed. Independent claim 1 requires a VOC component having from about 1 to about 30 wt.% of a propellant and from about 1 to about 45 wt.% of an alcohol of 1 to 8 carbon atoms. In contrast, the Vlasblom patent does not disclose a composition having either the propellant or the alcohol, let alone in a particular amount. Further, claim 1

requires water in an amount up to about 50 wt.%. In contrast, the Vlasblom patent does not disclose any composition having water, let alone in a particular amount.

Claims 1 to 34, 43 and 44 have been rejected under 35 U.S.C. 102(b) as being anticipated by, or, in the alternative, obvious under 35 U.S.C. 103(a) in view of U.S. Patent No. 4,970,220 to Chaussee (the Chaussee patent).

The rejection of claims 1 to 34, 43 and 44 under 35 U.S.C. 102(b) or under 35 U.S.C. 103(a) in view of the Chaussee patent is traversed. Independent claim 1 requires a VOC component having from about 1 to about 30 wt.% of a propellant and from about 1 to about 45 wt.% of an alcohol of 1 to 8 carbon atoms. In contrast, the Chaussee patent does not disclose an insect repellent composition having either the propellant or the alcohol, let alone in a particular amount. Example XVIII discloses two insect repellent lotions, but neither have a propellant or an alcohol, let alone in a particular amount. Further, the first composition R-1 in Example XVIII has a water level of 60.54 wt.%, a level in excess of the about 50 wt.% upper limit for water in claim 1.

Claims 1 to 8, 12, 16, 20 to 22, 24, 26, 27, 32 to 34, 43 and 44 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,145,604 to Neumiller (the Neumiller patent).

The rejection of claims 1 to 8, 12, 16, 20 to 22, 24, 26, 27, 32 to 34, 43 and 44 under 35 U.S.C. 102(b) over the Neumiller

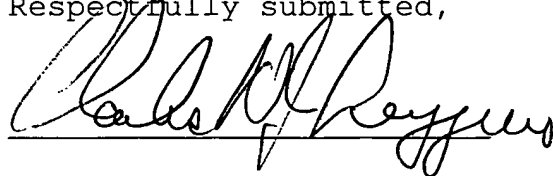
patent is traversed. Independent claim 1 requires that the Non-VOC component have water in an amount up to about 50 wt.%. In contrast, the Neumiller patent discloses only compositions having water in excess of the about 50 wt.% upper limit of claim 1. The Neumiller patent discloses at col. 6, lines 20 to 22 that water makes up the balance of the aqueous components for all formulations. The aerosol composition in working example 9 of the Neumiller patent has 83.9 wt.% water, in excess of the about 50 wt.% upper limit of claim 1. Working example 9 also has alcohol (ethanol) and propellant (2,2,4-trimethyl pentane) at levels below that required by claim 1. The aerosol composition in working example 10 of the Neumiller patent has 71.7 wt.% water, in excess of the about 50 wt.% upper limit of claim 1. Working example 10 also has propellant (2,2,4-trimethyl pentane) at a level below that required by claim 1. Working example 10 also does not have an alcohol. Claim 1 also distinguishes over the three insect repellent compositions in working example 15 of the Neumiller patent. The first composition (lines 46 to 49) has 79.7 wt.% water, in excess of the about 50 wt.% upper limit of claim 1. The first composition has 0.3 wt.% 2,2,4-trimethyl pentane, less than the about 1 wt.% level of propellant required by claim 1. The second and third compositions (lines 50 to 55) have no water at all (required by claim 1), let alone a certain amount. The second and third compositions also have 75 wt.% and 85 wt.% ethanol, in excess of the about 45 wt.% upper limit for an alcohol in claim 1. Dependent claims 10, 11 and 17 further distinguish the teachings of the Neumiller patent based on amount of water.

Claims 1, 4 to 8, 12 to 14, 20 to 22, 24, 25, 31, 34 and 36 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,306,905 to Kurz et al. (the Kurz patent).

The rejection of claims 1, 4 to 8, 12 to 14, 20 to 22, 24, 25, 31, 34 and 36 under 35 U.S.C. 102(e) over the Kurz patent is traversed. Independent claim 1 requires a VOC component having from about 1 wt.% to about 30 wt.% of a propellant and from about 1 wt.% to about 45 wt.% of an alcohol of 1 to 8 carbon atoms. The Kurz patent discloses aerosol formulations at col. 3, lines 28 to 31 but does not disclose amounts of propellant or aerosol formulations in combination with an alcohol, let alone with a particular amount of alcohol. The Kurz patent discloses insect repellent compositions at working examples 1 and 2, but these compositions are highly aqueous, i.e., approximately 85 wt.% water, clearly above the required about 50 wt.% upper limit for water in claim 1.

Reconsideration of claims 1 to 3, 5 to 8, 10 to 23, 25 to 27, 29 to 34, 36, 43 and 44 is deemed warranted in view of the foregoing, and allowance of said claims and new claims 45 and 46 is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles N. J. Ruggiero", is written over a horizontal line.

Dated: February 27, 2004

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